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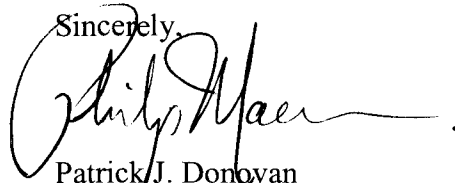
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th H Street, SW, Portals
Washington, DC 20554

Re: Ex Parte, CC Docket Nos. 01-338, 98-141, 98-184

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on August 24, 2004, the undersigned on behalf of 23 CLECs¹ met with Diana Lee, Trent Harkrader, and Peter Young of the Enforcement Bureau. We presented the views set forth in Attachment B that were provided at the meeting which relate to the Reply Comments filed by these CLECs in CC Dockets No. 98-141 and 98-184 dated August 10, 2004.

Sincerely,

A handwritten signature in cursive script, appearing to read "Philip J. Macres".

Patrick J. Donovan
Philip J. Macres

¹ See Attachment A.

ATTACHMENT A

CLECS REPRESENTED
DURING AUGUST 24, 2004 EX PARTE MEETING

ACN Communication Services, Inc.
Adelphia Business Solutions Operations, Inc. d/b/a TelCove
Alpheus Communications, L.P. (f/k/a El Paso Networks, L.P.)
ATX Communications, Inc.
Capital Telecommunications, Inc.
CTC Communications Corp.
CTSI, LLC
DSLnet Communications, LLC
El Paso Networks, LLC
Focal Communications Corp.
Gillette Global Network, Inc. d/b/a Eureka Networks
ICG Telecom Group, Inc.
Integra Telecom, Inc.
Lightship Telecom, LLC
LightWave Communications, LLC
McLeodUSA Telecommunications Services, Inc.
Mpower Communications Corp.
NTELOS Network Inc.
Pac-West Telecomm, Inc.
PAETEC Communications, Inc.
R&B Network Inc.
RCN Telecom Services, Inc.
Vycera Communications, Inc (f/k/a Genesis Communications Int'l, Inc.)

ATTACHMENT B

**VERIZON AND SBC REMAIN OBLIGATED TO OFFER UNES PURSUANT TO
THEIR RESPECTIVE MERGER ORDERS**

- I. To Address the Uncertainty Regarding the Availability of UNEs While Such Rules are Being Litigated, Verizon and SBC are Still Obligated Under Their Respective Merger Orders to Offer UNEs Until the FCC Establishes Final and Non-Appealable UNE Rules.

The FCC's rationale for imposing this Merger Condition illustrates why our interpretation of it is correct. In the Bell Atlantic/GTE and SBC/Ameritech Merger Orders, the FCC established this condition so that there would be an undisputed list of UNEs that CLECs could obtain from Verizon and SBC while the UNE rules were being disputed in court. This Merger Condition would fill that role until a decision regarding the initial implementation of 251(c)(3) became final, which has never happened. Indeed, the uncertainty the FCC was concerned about when it approved these merger has not gone away.

- A. Paragraph 39 of the *Bell Atlantic/GTE Merger Order* and Associated Condition XIII Requires Verizon to Offer UNEs Pursuant to the Commission's *UNE Remand* and *Line Sharing Orders* Until the Orders in Those Proceedings, "**and Any Subsequent Proceedings**, Become Final and Non-Appealable."
1. The Merger Condition did not terminate after 36 months because the Enforcement Bureau has already determined that the general 36 month sunset provision does not apply to this condition. See 17 FCC Rcd 19595, DA 02-2564, ¶ 3 & n.7.
 2. Verizon's obligation to offer certain UNEs under the Merger Condition continues until the new UNE rules that are established by the Commission become final and non-appealable.
 - a) The Merger Condition did not terminate when the Supreme Court denied certiorari of *USTA I* in March of 2003. The *UNE Remand Order* did not become final and non-appealable because the subsequent proceedings never became final and non-appealable. In addition, *USTA I* did not conclude that such UNEs are "not required to be provided" by Verizon.
 - b) The Merger Condition did not terminate as a result of *USTA II*. The subsequent proceedings still continue, *USTA II* is being appealed to the Supreme Court and the FCC has initiated proceedings to address *USTA II*. With respect to Broadband UNEs, they would terminate upon judicial affirmation of the Commission's decision that Verizon is not required to offer such UNEs. See Footnote 17 of the Comments of the Joint Commenters. But as to high capacity loops and transport facilities. i.e, DS-1 facilities, that is not the case.

3. The *TRO* did not repeal the Merger Conditions by implication and the FCC's interim rules did not either (there is no irreconcilable conflict between the *TRO* and the merger conditions. In addition, there is no clear and manifest evidence that the FCC intended to repeal such obligations). Any changes the FCC makes to the Merger Conditions must be announced and justified. This has not occurred.
 4. The fact that paragraph 39 of the Merger Conditions does not reference subsequent proceedings does not suggest that the merger condition has expired. Rather, the condition should be read consistent with the FCC's stated interpretation of the condition that was articulated in paragraph 316 of the Merger Order.
 5. The last sentence of paragraph 39 did not sunset the condition because, as discussed above, the proceedings still continue on. If the FCC wanted the condition to expire when the UNE Remand and Line Sharing "Orders" became final and non-appealable it would have said that in the condition, but it did not. Rather, the FCC was referencing when the "proceedings" become final and non-appealable, which includes subsequent proceedings, and that has not happened.
 6. Interpretation of the condition is construed against Verizon, the drafter.
- B.** For Similar Reasons, Paragraph 394 of the *SBC/Ameritech Merger Order* and Associated Condition XVII Requires SBC to Offer UNEs as Well.

VERIZON'S OBLIGATION TO OFFER UNES
UNDER THE BELL ATLANTIC/GTE MERGER ORDER, CC DOCKET 98-184

- *Bell Atlantic/GTE Merger Order*, ¶ 316(emphasis added):

Offering of UNES. In order to reduce uncertainty to competing carriers from litigation that may arise in response to our orders in the UNE Remand and Line Sharing proceedings, from now until the date on which the Commission's *orders in those proceedings, and any subsequent proceedings, become final and non-appealable*, Bell Atlantic and GTE will continue to make available to telecommunications carriers, in accordance with those orders, each UNE and combination of UNES that is required under those orders, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is *not required to provide the UNE or combination of UNES* in all or a portion of its operating territory. This condition only would have practical effect in the event that our rules adopted in the UNE Remand and Line Sharing proceedings are stayed or vacated.

- *Bell Atlantic/GTE Merger Order*, Appendix D, ¶ 39(emphasis added):

XIII. Offering of UNES

Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNES and UNE combinations required in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) (UNE Remand Order) and Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. Dec. 9, 1999) (Line Sharing Order) in accordance with those Orders until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNES *is not required to be provided by Bell Atlantic/GTE* in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.

- Did not expire June 2003 (36 months after the merger was approved): Rather the obligation expires upon the occurrence of the following events: (1) when the subsequent proceedings associated with the UNE Remand and Line Sharing Orders become final and non-appealable; (2) a final and non-appealable Commission or judicial decision that Verizon is not longer required to provide certain UNES (e.g., Broadband UNES). See 17 FCC Rcd at 19596, DA 02-2564, ¶ 3 & n.7
- Commission may modify the conditions. *Bell Atlantic/GTE Merger Order*, ¶ 345 (citing 47 U.S.C. § 416(b) ("the Commission is hereby authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper"))

SBC'S OBLIGATION TO OFFER UNES
UNDER THE SBC/AMERITECH MERGER ORDER, CC DOCKET 98-141

- *SBC/Ameritech Merger Order*, ¶ 394 (emphasis added):

In order to reduce uncertainty to competing carriers from litigation that may arise in response to the Commission's order in its UNE Remand proceeding, *from now until the date on which the Commission's order in that proceeding, and any subsequent proceedings, become final and non-appealable*, SBC and Ameritech will continue to make available to telecommunications carriers each UNE that was available under SBC's and Ameritech's interconnection agreements as of January 24, 1999, even after the expiration of existing interconnection agreements, *unless the Commission removes an element from the list* in the UNE Remand proceeding or a final and non-appealable judicial decision that determines that SBC/Ameritech is *not required to provide the UNE* in all or a portion of its operating territory.

- *SBC/Ameritech Merger Order*, Appendix C, ¶ 53(emphasis added):

XVII. Offering of UNES

SBC/Ameritech shall continue to make available to telecommunications carriers, in the SBC/Ameritech Service Area within each of the SBC/Ameritech States, such UNES or combinations of UNES that were made available in the state under SBC's or Ameritech's local interconnection agreements as in effect on January 24, 1999, *under the same terms and conditions that such UNES or combinations of UNES were made available on January 24, 1999, until the earlier of (i) the date the Commission issues a final order in its UNE remand proceeding in CC Docket No. 96-98 finding that the UNE or combination of UNES is not required to be provided by SBC/Ameritech in the relevant geographic area, or (ii) the date of a final, non-appealable judicial decision providing that the UNE or combination of UNES is not required to be provided by SBC/Ameritech in the relevant geographic area.* This Paragraph shall become null and void and impose no further obligation on SBC/Ameritech after the effective date of a final and non-appealable Commission order in the UNE remand proceeding.

- Did not expire October 2002 (36 months after the merger was approved): Rather the obligation expires *until the earlier of (i) the date the Commission issues a final order in its UNE remand proceeding in CC Docket No. 96-98 finding that the UNE or combination of UNES is not required to be provided by SBC/Ameritech, or (ii) the date of a final, non-appealable judicial decision providing that the UNE or combination of UNES is not required to be provided by SBC/Ameritech* (e.g., Broadband UNES). See 17 FCC Rcd at 19596, DA 02-2564, ¶ 3 & n.7
- Commission may modify the conditions. *SBC/Ameritech Merger Order*, ¶ 415 (citing 47 U.S.C. § 416(b))